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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 CARLOS VICTORINO and ADAM  
12 TAVITIAN, individually, and on behalf of  
13 other members of the general public  
similarly situated,

14 Plaintiffs,

15 v.

16 FCA US LLC, a Delaware limited  
17 liability company, ,

18 Defendant.

Case No.: 16cv1617-GPC(JLB)

**ORDER DENYING DEFENDANT'S  
MOTION FOR LEAVE TO FILE A  
THIRD PARTY COMPLAINT**

**[Dkt. No. 121.]**

19  
20 Before the Court is Defendant FCA US LLC's motion for leave to file a third party  
21 complaint. (Dkt. No. 121.) Plaintiffs Carlos Victorino and Adam Tavitian filed an  
22 opposition on September 22, 2017. (Dkt. No. 125.) A reply was filed on September 29,  
23 2017. (Dkt. No. 128.) Based on the reasoning below, the Court DENIES Defendant's  
24 motion for leave to file a third party complaint against J&E Auto Services, Inc.

25 **BACKGROUND**

26 Plaintiffs Carlos Victorino ("Victorino") and Adam Tavitian ("Tavitian")  
27 (collectively "Defendants") bring this purported class action complaint based on defects  
28 in the 2013-2016 Dodge Dart vehicles equipped with a Fiat C635 manual transmission

1 that cause their vehicles' clutches to fail and stick to the floor. (Dkt. No. 104, FAC ¶¶ 1,  
2 2.) Defendant FCA US LLC ("Defendant") designs, manufactures, markets, distributes,  
3 services, repairs, sells and leases passenger vehicles, including Plaintiffs' vehicles. (Id. ¶  
4 52.) Plaintiffs assert that the clutch pedal defect causes their vehicles to stall, fail to  
5 accelerate, and results in "premature failure of the transmission's components, including,  
6 but not limited to, the clutch master cylinder and reservoir hose, clutch slave cylinder and  
7 release bearing, clutch disc, pressure plate, and flywheel." (Id. ¶ 2.) Plaintiffs' causes of  
8 action are based on Defendant's failure to disclose and/or intentionally concealed the  
9 defect in the Clutch System. (Id. ¶¶ 99, 117.)

10 Tavitian purchased a 2013 manual-transmission Dodge Dart in late November  
11 2012. (Dkt. No. 74, Ps' Response to SUMF, No. 20.<sup>1</sup>) He testified that within six  
12 months of purchasing the car, he noted something off about the clutch. (Dkt. No. 55-2,  
13 Wallace Decl., Ex. K, Tavitian Depo. at 103:6-14.) Every once in a while when he put  
14 his foot on the clutch, "it would either feel like it was a heavy clutch or when I took my  
15 foot off it would take a second to catch up, like hit my foot on the way up . . . ." (Id.)

16 In July 2014, when he was driving on the start of a steep incline on Interstate 5  
17 called the "Grapevine", Tavitian's clutch stuck to the floor and he was forced to pull it up  
18 after each shift for over 50 miles. (Id., Ex. L at 72.) On July 7, 2014, Tavitian took his  
19 vehicle to Rydell Chrysler Dodge Jeep Ram . (Id.; Dkt. No. 50-13, D'Aunoy Decl., Ex. J  
20 at 3-6.) The service advisor described Tavitian's complaints as follows:

21 CUSTOMER STATES CLUTCH KEEPS GETTING STUCK  
22 WILL NOT ALLOW CUSTOMER TO SHIFT BETWEEN GEARS AT TIMES  
23 CK AND ADVISE VEHICLE HAS MAX CARE COVERAGE  
24 CLUTCH MASTER CYLINDER LEAKING

25 (Dkt. No. 55-2, Wallace Decl., Ex. M at 78.) On July 8, 2014, the same service advisor  
26 wrote,  
27 \_\_\_\_\_

28 <sup>1</sup> The facts are taken from the Court's order on Defendant's summary judgment motion. (Dkt. No. 91.)

1 CUSTOMER STATES CLUTCH KEEPS GETTING STUCK.  
2 SOP MASTER CYLINDER IS IN  
3 MASTER CYLINDER LEAKING  
4 REPLACED CLUTCH MASTER CYLINDER

5 (Dkt. No. 55-2, Wallace Decl., Ex. HH at 122.) Tavitian paid \$298.33 for the repair.  
6 (Id.) Tavitian applied for reimbursement of the \$298.33 pursuant to the January 2016  
7 voluntary customer service action which provided an extended warranty for free repairs  
8 of the clutch master cylinder. (Dkt. No. 50-14, D'Aunoy Decl., Ex. L at 2.) His request  
9 for reimbursement was denied.

10 On March 4, 2015, the check engine light was on and the car was jerking so  
11 Tavitian took his car to Van Nuys Chrysler Dodge Jeep Ram and the clutch pedal switch  
12 was replaced. (Dkt. No. 125-1, Wallace Decl. ¶ 6.)

13 Over a year later, around July 9, 2016, Tavitian's vehicle clutch failed while  
14 driving to Palm Springs; it stuck to the floor and he wasn't able to pull it back up. (Dkt.  
15 No. 55-2, Wallace Decl., Ex. L at 72-73.) The car was towed to Glendale Dodge  
16 Chrysler Jeep indicating the issue as "clutch pedal stays on the floor and will not come  
17 (sic) back up." (Id. at 73; Dkt. No. 50-16, D'Aunoy Decl., Ex. M at 3-4.)

18 On July 11, 2016, Plaintiffs' counsel notified FCA about the failure and offered an  
19 inspection of the vehicle at the dealership. (Dkt. No. 125-1, Wallace Decl. ¶ 9.) On  
20 August 16, 2016, FCA performed an inspection and in order to determine the issue,  
21 authorized the dealer to replace the clutch master cylinder without a charge. (Id. ¶ 10.)  
22 Even after the dealer replaced the clutch master cylinder and the reservoir hose, and after  
23 bleeding the clutch lines, the clutch pedal was still stuck down. (Dkt. No. 50-16,  
24 D'Aunoy Decl., Ex. M at 3-4.) Then, after removing the transmission, it found the  
25 throw-out bearing coming apart and leaking, and after removing the clutch disc for  
26 inspection, it found the clutch worn out and there were signs of overheating. (Id.)  
27 Tavitian was told the whole clutch system had to be replaced for about \$1,700.00. (Dkt.  
28 No. 55-2, Wallace Decl., Ex. L at 73; Dkt. No. 50-16, D'Aunoy Decl., Ex. M at 3-4.)

1 Tavitian declined repairs at the dealership. (Dkt. No. 55-2, Wallace Decl., Ex. L at 73.)  
2 Instead, on October 3, 2016, he brought his vehicle to J&E Auto Services, Inc. (“J&E”)  
3 where Tavitian repeated what the dealership told him, that it needed a new pressure plate  
4 and throw-out bearing (slave cylinder). (Dkt. No. 125-1, Wallace Decl. ¶ 13.) J&E  
5 installed a new clutch set and new slave cylinder for \$950.70. (Dkt. No. 55-2, Wallace  
6 Decl., Ex. N at 2.)

7 Emad Salama, the owner of J&E and a mechanic, testified that he could see brake  
8 fluid dripping from the transmission, which implicated the clutch slave cylinder. (Dkt.  
9 No. 125-1, Wallace Decl. ¶ 14.) He pulled out the transmission, replaced the clutch, and  
10 added brake fluid. (Id. ¶ 15.) Over the course of two weeks, J&E replaced multiple parts  
11 and also had to bleed the air out of the clutch system. (Id. ¶ 16.) A replacement part, an  
12 OEM slave cylinder, was purchased by J&E from Glendale Chrysler Dodge Jeep which  
13 J&E later reported as defective. (Id. ¶ 17.) Then the dealership refused to sell J&E  
14 another slave cylinder claiming that Tavitian’s vehicle had been “red-flagged.” (Id. ¶  
15 18.) J&E was unable to resolve the clutch issue and refunded Tavitian his money. (Id. ¶  
16 19.)

17 Tavitian continued to experience symptoms of a stuck clutch pedal and his car was  
18 towed to Russell Westbrook Chrysler Dodge Jeep Ram on January 24, 2017. (Dkt. No.  
19 55-2, Wallace Decl., Ex. O.) The technician reconnected the hydraulic clutch master  
20 hose that was disconnected and bled the hydraulic clutch system. (Id.)

21 On February 20, 2017, Tavitian’s car was towed back to Russell Westbrook  
22 Chrysler Dodge Jeep Ram because the clutch was “non-operational.” (Dkt. No. 125-1,  
23 Wallace Decl. ¶ 22.) Tavitian’s complaint was verified and the “clutch pressure hose”, a  
24 “union-clutch tube” and a “clip-clutch tube” were replaced on March 15, 2017. (Id. ¶  
25 25.) The \$315.88 Tavitian had previously paid for the January 2017 repair was credited  
26 to this repair. (Dkt. No. 125-1, Wallace Decl., Ex. I.)

27 Defendant seeks to file a third party complaint against J&E for equitable  
28 indemnity, comparative indemnity, contribution and declaratory judgment based on

1 J&E's failure to "properly reconnect a hydraulic hose or damaged the hose, causing some  
2 or all of Tavitian's subsequent clutch-related issues and caused Tavitian to incur damages  
3 which Tavitian seeks to recover from FCA US in the lawsuit." (Dkt. No. 121-4,  
4 Proposed Third Party Complaint ¶ 8.)

#### 5 **Discussion**

6 Federal Rule of Civil Procedure 14 provides,

7 A defending party may, as third-party plaintiff, serve a summons and  
8 complaint on a nonparty who is or may be liable to it for all or part of the  
9 claim against it. But the third-party plaintiff must, by motion, obtain the  
10 court's leave if it files the third-party complaint more than 14 days after  
serving its original answer.

11 Fed. R. Civ. P. 14. The purpose of Rule 14 is to "promote judicial efficiency by  
12 eliminating the necessity for the defendant to bring a separate action against a third  
13 individual who may be secondarily or derivatively liable to the defendant for all or part  
14 of the plaintiff's original claim." Southwest Adm'r, Inc. v. Rozay's Transfer, 791 F.2d  
15 769, 777 (9th Cir. 1986) (citation omitted). The district court has discretion in  
16 determining whether a defendant should be granted leave to file a third party complaint.  
17 Id. "[A] third-party claim may be asserted only when the third party's liability is in  
18 some way dependent on the outcome of the main claim and the third party's liability is  
19 secondary or derivative." United States v. One 1977 Mercedes Benz, 708 F.2d 444, 452  
20 (9th Cir. 1983). Factors that courts look to determine whether to allow a third party  
21 complaint are "(1) prejudice to the original plaintiff; (2) complication of issues at trial;  
22 (3) likelihood of trial delay; and (4) timeliness of the motion to implead." Irwin v.  
23 Mascott, 94 F. Supp. 2d 1052, 1056 (N.D. Cal. 2000); see also Zero Tolerance Entm't,  
24 Inc. v. Ferguson, 254 F.R.D. 123, 127 (C.D. Cal. 2008).

25 "It need not be shown that the third party defendant is automatically liable if the  
26 defendant loses the underlying lawsuit. It is sufficient if there is some possible scenario  
27 under which the third party defendant may be liable for some or all of the defendant's  
28

liability to plaintiff.” F.D.I.C. v. Loube, 134 F.R.D. 270, 272 (N.D. Cal. 1991). “The crucial characteristic of a Rule 14 claim is that [a] defendant is attempting to transfer to the third-party defendant the liability asserted against [it] by the original plaintiff.” Stewart v. Am. Int’l Oil & Gas Co., 845 F.2d 196, 200 (9th Cir. 1988) (quoting 6 Charles A. Wright et al., Federal Practice & Procedure § 1446 at 157 (1971)) (the third-party plaintiff’s claim must be dependent upon the outcome of the main claim). “The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough.” Id.; One 1977 Mercedes Benz, 708 F.2d at 452 (“It is not sufficient that the third-party claim is a related claim; the claim must be derivatively based on the original plaintiff’s claim.”) Facts that are “inextricably intertwined” does not satisfy the standard under Rule 14; “impleader is narrower, requiring an attempt to pass on to the third party all or part of the liability asserted against the defendant.” Uldricks v. Kapaa, Civil No 07-117 JMS/KSC, 382 LLC, 2007 WL 2694409, at \*4 (D. Haw. Sept. 11, 2007). A third-party claim “presupposes liability on the part of the original defendant which he is attempting to pass on to the third-party defendant.” Homem v. Intek Corp., No. C-05-0792, 2006 WL 3388623, at \*1 (N.D. Cal. Nov. 22, 2006) (quoting Parr v. Great Lakes Express Co., 484 F.2d 767, 769 (7th Cir. 1973) (affirming dismissal of third-party complaint, where original defendant sought to join third-party on theory third-party was sole cause of plaintiff’s claimed injuries)).

Defendant argues that it seeks to file a third party complaint against J&E because some or all of the damages sought by Plaintiff were caused by J&E. FCA maintains that the filing of a third party complaint will result in no prejudice to Plaintiffs and will not further complicate the issues or delay trial. Since J&E is already involved in the case, the evidence and testimony against J&E will also be necessary to resolve Tavitian’s underlying claims against FCA. If additional discovery is needed, it may be conducted prior to the December 22, 2017 discovery deadline. (Dkt. No. 110 at 2.)

Plaintiffs oppose arguing that Defendant has failed to establish its right to either indemnification or contribution by J&E under any of the three legal theories in the

1 proposed third party complaint. Second, Plaintiffs argue that adding J&E will result in  
2 delay, complicate issues and cause prejudice by requiring additional motion practice and  
3 discovery.

4 In the FAC, Plaintiffs seek to impose liability on FCA for its failure to disclose and  
5 intentionally concealing a defect in the design of the 2013-2016 Dodge Dart vehicles’  
6 hydraulic clutch system under California’s Consumer Legal Remedies Act (“CLRA”),  
7 California’s Unfair Competition Law (“UCL”), breach of the implied warranty pursuant  
8 to California’s Song-Beverly Consumer Warranty Act and breach of the implied warranty  
9 under the federal Magnuson-Moss Warranty Act. (Dkt. No. 104.)

10 The proposed third party complaint seeks equitable indemnity, comparative  
11 indemnity, contribution and declaratory relief based on the fact that J&E performed or  
12 attempted to perform repairs on Tavitian’s vehicle and after such repairs, Tavitian  
13 experienced further clutch-related issues and further repair costs. (Dkt. No. 121-4,  
14 D’Aunoy Decl., Ex. B.) The third party complaint alleges that J&E either failed to  
15 properly reconnect a hydraulic hose or damaged the hose, causing some or all of  
16 Tavitian’s subsequent clutch-related issues. (*Id.*)

17 In Clarke, the district court found that the defendant met the derivative liability  
18 requirement that the “substantive basis for Plaintiff’s complaint is that Defendant  
19 breached his employment contract, and the allegations in the third-party complaint would  
20 transfer liability for any such breach onto Nguyen from Defendant on the grounds that by  
21 entering the same contracts Nguyen breached his fiduciary duty to Defendant.” Clarke v.  
22 Pub. Employees Union Local 1, Case No. 16cv4954-JSC, 2017 WL 550231, at \*2 (Feb.  
23 10, 2017).

24 The proposed third party complaint seeks to impose liability on J&E for some or  
25 all of the damages sought by Plaintiffs. However, the allegations in the proposed third  
26 party complaint are not based on liability based on the causes of action asserted in the  
27 FAC. Under Rule 14, the Court must look at whether the third party defendant “may be  
28 secondarily or derivatively liable to the defendant for all or part of the plaintiff’s *original*

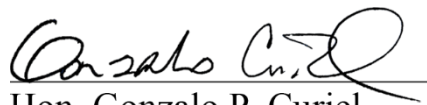
1 *claim.” See Southwest Adm’r, Inc.*, 791 F.2d at 777 (emphasis added). Therefore, the  
2 Court looks at whether the proposed third party complaint is seeking to impose all or part  
3 of Defendant’s liability on J&E based on Plaintiffs’ claim of a failure to disclose a design  
4 defect in Defendant’s vehicles. The proposed third party complaint does not allege that  
5 J&E is partially or fully liable for a design defect alleged in the FAC. Thus, Defendant  
6 has not demonstrated that J&E may be “secondarily or derivatively liable” to FCA for  
7 “all or part of the plaintiff’s original claim”, *see Stewart*, 845 F.2d at 200, or in other  
8 words, that J&E may be liable to Plaintiffs on their causes of action. *See Alfaville LCC*  
9 *v. L.A. Signal, Inc.*, Case No. CV 08–08180 GAF (PJWx), 2009 WL 10674386, at \*2  
10 (C.D. Cal. Oct. 26, 2009) (granting motion for leave to file a third party complaint  
11 because “the applicable law in Plaintiff’s First Amended Complaint also applies to the  
12 proposed Third Party Complaint.”); *Design Collection, Inc. v. Misyd Corp.*, CV 14-  
13 09735-AB(JCx), 2015 WL 126555553, at \*2 (N.D. Cal. Oct. 7, 2015) (“Defendants’  
14 proposed TPC falls squarely within this traditional purpose and raises only claims  
15 dependent on the outcome of Plaintiff’s claims.”). While there are similar underlying  
16 facts, Defendant has not demonstrated that J&E is secondarily or derivatively responsible  
17 for the alleged failure to warn or intentional concealment of a design defect in vehicles  
18 manufactured by FCA. It does not seek to transfer the design defect liability from it to  
19 J&E. Since there is no allegation that J&E is partially or fully liable for FCA’s failure to  
20 warn or its intentional concealment of the design defect, the Court DENIES Defendant’s  
21 motion for leave to file a third party complaint.

## 22 **Conclusion**

23 Based on the above, the Court DENIES Defendant’s motion for leave to file a third  
24 party complaint. The hearing set for October 13, 2017 shall be **vacated**.

25 IT IS SO ORDERED.

26 Dated: October 11, 2017

27   
28 Hon. Gonzalo P. Curiel  
United States District Judge